

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
v.)	Case No.: 2:12-cv-218
)	
KENNETH L. NELSON, <i>et al.</i> ,)	
)	
Respondents.)	

REPLY BRIEF IN SUPPORT OF THE UNITED STATES' PETITION TO LEVY

The United States replies in support of its petition as follows:

ARGUMENT

The United States filed a petition seeking approval of an administrative levy by the Internal Revenue Service upon the principal residence of Kenneth and Wanda Nelson. Under 26 U.S.C. §§ 6334(a)(13) and 6334(e)(1), property used as a principal residence of a taxpayer is generally exempt from a levy, unless such levy is approved by a United States District Court Judge or Magistrate Judge. 26 U.S.C. §§ 6334(a)(13)(B), (e)(1); 26 C.F.R. § 301.6334-1(d).

To prove its *prima facie* case, the United States must file a petition that shows that the underlying tax liability had not been satisfied, the requirements of any applicable law or administrative procedure relevant to the levy have been met, and there is no reasonable alternative for collection of the taxpayer's debt. 26 C.F.R § 301.6334-1(d)(1); *e.g.*, *United States v. Ryan*, 2011 WL 1344499, *1 (N.D. Cal. April 8, 2011). The United

States has made its *prima facie* case by filing its Petition and supporting it with the Declaration of Revenue Officer Hill. (Docket nos. 1-2.)

The only arguments that the Nelsons raise are frivolous tax-protester theories. The Nelsons appear to argue through citation to Scripture and the Uniform Commercial Code that the United States is somehow “violating [their] God given freewill choice and commerce” by collecting their federal tax liabilities. (Docket no. 7, *Nelsons’ Affidavit of TRUTH and Facts*, pp. 4-5.) The Nelsons also challenge the validity of the Form 1040 income tax return forms, assert that the United States is not a sovereign power, and raise similarly specious arguments. (Docket no. 8, *Nelsons’ Affidavit*.)

Under the Treasury regulations governing the approval of a levy on a personal residence, a taxpayer “is not permitted to challenge the merits underlying the tax liability in the proceeding.” 26 C.F.R. § 301.6334-1(d)(2); *e.g.*, *Unite States v. Henry*, 2008 WL 5413156, *1 (M.D. Fla. Nov. 3, 2008); *United States v. DelVecchio*, 2010 WL 2600697, *2 (S.D. Fla. March 12, 2010). The Nelsons’ arguments go to the merits of the underlying tax liability, and therefore it cannot properly be heard in this matter. Moreover, even if these arguments could be heard, they are meritless on their face. This Court should not take the time to dissect these arguments “with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.” *Crain v. Comm’r*, 737 F.2d 1417, 1417 (5th Cir. 1984).

CONCLUSION

For the foregoing reasons, the United States' petition should be granted and the levy of the Nelson's personal residence should be authorized.

Date: May 29, 2012

Respectfully submitted,

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/s/

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CERTIFICATE OF SERVICE

I hereby certify that, on the 29th day of May, 2012, I will mail a copy of the foregoing Reply Brief in Support of the United States' Petition to Levy and the NEF by U.S. mail, postage paid, to the following non-filing user(s):

Kenneth L. Nelson
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